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**MCDERMOTT, WILL & EMERY**

March 22, 1999

**VIA HAND DELIVERY**

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
100 Cambridge Street - 12th Floor  
Boston, MA 02202

Re: D.T.E. 97-105

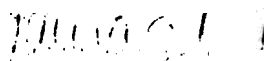
Dear Secretary Cottrell:

Enclosed please find the Stipulation and Agreement between Eastern Edison Company and Montaup Electric Company (the "Companies") and the Attorney General in the above-referenced docket. The Companies represent that NRG Energy and Constellation Power assent to the Stipulation and Agreement.

The Companies also request the Department take administrative notice of the Federal Energy Regulatory Commission's March 15, 1999 Orders Authorizing Disposition of Jurisdictional Facilities in Montaup Electric Company, Newport Electric Corporation, FPL Energy Wyman IV LLC, 86 FERC ¶ 62,197 (1999) (Wyman IV) and Montaup Electric Company and Somerset Power LLC, 86 FERC ¶ 62,196 (1999) (Somerset). I have conferred with counsel for other parties to this proceeding and have received no objection to such request for administrative notice.

Please date stamp a copy of the enclosed letter and return it to the messenger.  
Thank you.

Sincerely,



Laura S. Olton

LSO:sla  
Enclosure  
cc: A. Quincy Vale, Hearing Officer

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**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

_____	)	
Eastern Edison Company	)	
Montaup Electric Company	)	
_____	)	

D.T.E. 97-105

**STIPULATION AND AGREEMENT**

This Stipulation and Agreement ("Stipulation") is jointly sponsored by the Office of the Attorney General ("Attorney General"), Eastern Edison Company ("Eastern"), and Montaup Electric Company ("Montaup"), parties to this proceeding. The Stipulation is designed to provide a resolution of all issues presented in D.T.E. 97-105, including but not limited to Eastern and Montaup's Amended Petition for an exemption from G.L. c. 164, sec. 94A ("Section 94A") for the four wholesale standard offer service agreements (the "Standard Offer Agreements") which are part of the record in this proceeding (*See* MJH-2(a), (b), (c), and Exhibit E to Asset Purchase Agreement Relating to Somerset Station contained in Volume 2 of the Petition), and the value of the consideration paid for Somerset Station.

The parties to this Stipulation recognize and fully understand that their mutual promises in the Stipulation evidence the consideration they have extended to each other in their efforts to settle the issues of D.T.E. 97-105 in accordance with principles established by the Department pursuant to the Electric Utility Restructuring Act of 1997 ("Restructuring Act") and the Restructuring Settlement approved by the Department in D.T.E. 96-24. Accordingly, the parties have agreed to the following:

The sale of Montaup's 160 megawatt Somerset Station electric generating plant ("Somerset") to Somerset Power LLC, an indirect wholly-owned subsidiary of NRG Energy, Inc. ("NRG"), which is a wholly-owned subsidiary of Northern States Power Company, for \$54.75

million, and the sale of Montaup's .96% ownership interest in Wyman Station ("Wyman"), a 620 megawatt electric generating plant located in Yarmouth, Maine to FPL Energy Wyman IV LLC, a wholly owned subsidiary of FPL Energy, Inc. for \$2.4 million fully comply with the divestiture requirements included in the Restructuring Act and the Restructuring Settlement Agreements approved by the Department in D.T.E. 96-24 and the Federal Energy Regulatory Commission ("FERC") in Docket Nos. ER97-2800-000, ER97-3127-000, and ER97-2338-000. The auction process used to sell Somerset and Wyman met the divestiture requirements of the Restructuring Act: it ensured complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate therein, and thus was equitable and maximized the value of the generation facilities being sold.

2. The Department should approve the EUA Companies' proposed divestiture transactions as consistent with G.L. c. 164, §§ 1A(b)(1) and (2) and the Restructuring Settlement Agreements. This approval satisfies the requirement under the terms of the Retail Settlement Agreement that the Department should also approve the Companies' Divestiture Plan (see Retail Settlement Agreement, § V.D.1).

3. Under the terms of the Restructuring Settlement Agreements, (a) the appropriate level of the contract termination charge (including the calculation of the Residual Value Credit ("RVC") and any adjustments to the Reconciliation Account, and (b) the approval of the sale of Montaup's purchased power agreements ("PPAs") are matters to be determined by the FERC (see Wholesale Settlement Agreement, §§ 3.2, 3.3, 3.4, 6.1.3, 5.1-5.3). The Department has approved this process in D.T.E. 96-24 and has found it to be in the public interest.

4. Given that the FERC will ultimately review (following the dispute resolution process provided for under the terms of the Restructuring Agreements) and determine the appropriate level of the contract termination charge as well as whether the sale of Montaup's Pas should be approved, the Department need not make any findings on these issues.

5. Neither the parties' entry into this Stipulation nor the approval by the Department of its terms or of the divestiture of Somerset and Wyman, shall constitute or in any way be interpreted to evidence approval of or any finding on the level of the contract termination charge and/or the sale of Montaup's PPAs.

6. The Standard Offer Agreements consist of wholesale standard offer service agreements between Eastern and TransCanada Power Marketing, Ltd. ("TransCanada"), entered on April 7, 1998, between Eastern and NRG Energy Power Marketing ("NRG"), entered on October 13, 1998, and two agreements between Eastern and Constellation, entered on December 21, 1998.

7. The parties acknowledge that the Standard Offer Agreements between Eastern and Constellation are subject to a finding by the Department that "Eastern's actions in regard to [the Standard Offer] Agreement[s] are in accordance with G.L. c. 164, § 94A and § 1B(b) and that [the Standard Offer] Agreement[s] may become effective. The Standard Offer Agreements were negotiated pursuant to the Restructuring Settlement Agreements, which were reviewed and approved by the Department in D.T.E. 96-24, and are an integral part of the approvals granted by FERC in allowing Montaup Electric Company to terminate its all-requirements contract with Eastern. As such, the parties acknowledge that FERC will have continuing jurisdiction under the Federal Power Act to investigate and supervise the enforcement of all aspects of the Restructuring Settlement Agreements. In light of the existence of this alternative approval process and that the public interest would be served and protected thereby, and the Department's earlier determination that the Restructuring Settlement Agreements are in the public interest, the Department should exempt the Standard Offer Agreements between Eastern and its wholesale Standard Offer suppliers from further review and approval under G.L. c. 164, § 94A; the parties also agree that the record supports a finding by the Department that Eastern has complied with the Standard Offer Service competitive bidding requirements set forth in the Restructuring Settlement Agreements and G.L. c. 164, § 1B(b). Based on the foregoing,

the parties request that the Department enter a finding in its final order that the above-stated conditions precedent in the Constellation Standard Offer Agreements have been fully satisfied.

8. The parties to this Stipulation agree that the record in this proceeding should be reopened to receive the Affidavit of Michael J. Hirsh, which establishes that the standard offer obligations did not detract from the value paid for Somerset.

9. The Department should find that it has sufficient regulatory authority, resources, and access to books and records to exercise its duties, and that the designation of Somerset and Wyman as eligible facilities, as defined in Section 32 of the Public Utility Holding Company Act (as amended by the Energy Policy Act of 1992), (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law.

10. This Stipulation is the product of negotiations. The content of those negotiations shall be privileged and all offers of Settlement shall be without prejudice to the position of any party or participant presenting such offer.

11. This Stipulation is submitted on the condition that it be approved in full by the Department and on the further condition that if the Department does not approve the Stipulation in its entirety, the Stipulation shall be deemed withdrawn and shall not constitute a part of the record in any proceeding or used for any purpose.

12. Acceptance of this Stipulation by the Department shall not be deemed to restrain the Department's exercise of its authority to promulgate future orders, regulations or rules which resolve similar matters affecting other parties in a different fashion. Moreover, the signing of this Stipulation and acceptance by the Department shall not restrain or bind the parties hereto from asserting different positions on the law and the facts in any other judicial or administrative proceeding.

13 The rights conferred and obligations imposed on any party by this Stipulation shall be binding on or inure to the benefit of their successors in interest or assignees as if such successor or assignee was itself a party hereto.

A handwritten signature in black ink, appearing to read "George B. Dean", with a long horizontal flourish extending to the right.

George B. Dean  
Assistant Attorney General  
Chief, Regulated Industries Division

A handwritten signature in black ink, appearing to read "David A. Fazzone", with a stylized, cursive script.

David A. Fazzone  
David A. Fazzone, P.C.  
Attorney for  
Eastern Edison Company  
Montaup Electric Company

DATED: March 22, 1999

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

\_\_\_\_\_  
Eastern Edison Company )  
Montaup Electric Company )  
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D.T.E. 97-105

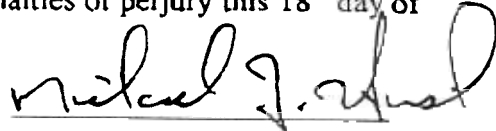
**AFFIDAVIT OF MICHAEL J. HIRSH**

During the hearing on February 24, 1999, the Attorney General asked the Companies' witnesses a line of questions regarding the effect of the assignment of wholesale standard offer as part of the sale of the Somerset facility (Tr. 1 at 16-18). The purpose of this affidavit is to supplement and clarify the responses on the record.

In response to questions from the Assistant Attorney General Brooks, the Companies' witnesses responded that it could not be determined whether Somerset would have commanded a higher price had there been no standard offer assignment (*id.* at 18). Since the Companies required all bids to include standard offer assignment, there is no basis for determining whether or not this was true on a global basis. However, the Companies can testify that the assignment of standard offer service did not detract, and in all likelihood enhanced, the value of the transaction before the Department.

Supporting this, I present the following facts and conclusions: While NRG was required to accept only Somerset's assignment of wholesale standard offer, NRG bargained for expanded standard offer assignment. The final transaction, as filed, includes standard offer responsibility from Millstone, Pilgrim, and Vt. Yankee as well as Somerset (Exh. MJH-2 at 4; *see also* AG 2-1 and 2-3). This additional responsibility was the result of bargaining by NRG to expand standard offer assignment. The fact that NRG placed a positive value on this assignment is evidenced by the Standard Offer Rebate included in the Wholesale Standard Offer Service Agreement (Exhibit E to the Asset Purchase Agreement). As explained in the testimony of Kevin A. Kirby, this feature of the contract actually provides a positive incentive to Eastern, Blackstone and Newport linked to NRG's delivering energy under standard offer service. The greater the standard offer energy delivery, the greater the incentive. The base incentive for Eastern is \$879,875 (Exh. KAK-1 at 10). This demonstrates a direct benefit to customers as a result of the standard offer assignment to NRG in this transaction and demonstrates that NRG places a positive value on the assignment.

Signed and affirmed under the pains and penalties of perjury this 18<sup>th</sup> day of March, 1999.



Michael J. Hirsh